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IN THE

Supreme Court of the United States

October Term, 1958

No. 370

SYLVIA SCHINDLER HOLLAND,
Petitioner,

vs.

NORMAN N. HOLLAND,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

LOUIS NIZER,
Counsel for Petitioner,
1501 Broadway,
New York 36, New York.

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NORMAN N. HOLLAND,

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

SYLVIA SCHINDLER HOLLAND, petitioner herein, prays that a writ of certiorari issue to review an order of the Supreme Court of Florida, entered in the above-entitled case on April 1, 1958. Petition for rehearing was denied by order of the Supreme Court of Florida, entered on May 20, 1958.

Citations to Opinions Below

There are no opinions below.

Jurisdiction

The order sought to be reviewed is that of the Supreme Court of Florida which was entered on April 1, 1958 (R. 2621, Appendix B) and which denied a petition (R. 2569-2573, Appendix D) for leave to apply to the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, for leave to file a Bill of Review or a Bill in the Nature of Review (R. 2574-2616, Appendix E), predicated upon newly discovered evidence. Petition for rehearing was denied by order of the Supreme Court of Florida dated May 20, 1958 (R. 2626, Appendix C).

The decree sought to be reviewed by the Bill of Review or Bill in the Nature of a Bill of Review was entered on July 25, 1955 in the said Dade County Circuit Court (R. 2538-2540) granting an absolute divorce in favor of respondent against petitioner. The decree was affirmed without opinion by the Supreme Court of Florida on May 1, 1957 (R. 2548), 95 So. 2d 424, and petition for rehearing was denied on June 5, 1957 (R. 2562).

Petitioner's time within which to file this petition was extended to September 19, 1958, by order dated July 23, 1958 (Appendix A). The jurisdiction of this Court is invoked under 28 U. S. C., Section 1257(3).

How Federal Question is Presented

The federal question sought to be reviewed herein was raised in the petition to the Supreme Court of Florida for leave to apply to the Circuit Court in and for Dade County, Florida, for leave to file a Bill of Review or Bill in the Nature of a Bill of Review, and also in the proposed Bill of Review or Bill in the Nature of a Bill of Review, filed therewith and incorporated in said petition by reference. It was alleged in said petition and in said proposed Bill of Review that in the light of newly discovered evidence of the venal and unethical practices of respondent's counsel and of the Circuit Court Judge and special master before whom the instant cause was heard—such evidence being disclosed for the first time during the legislative investigation of the said Judge in May, 1957, and his impeachment trial before the Senate of Florida in July and August, 1957—petitioner was deprived of "a fair and impartial trial, equal protection of the law, and due process of law contemplated by the Constitution of the State of Florida and of the United States of America" (R. 2570, 2589, 2591, 2598, Appendix D-1, E-16, E-18, E-23).

The Supreme Court of Florida denied without opinion the petition for leave to apply to the Circuit Court for leave to file a Bill of Review. Rehearing was also denied.

Constitutional Provision Involved

Amendment 14 to the Constitution of the United States, Section 1, provides:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Questions Presented

I. Was petitioner denied due process of law by the refusal of the Supreme Court of Florida to permit review of a final decree of divorce shown by sworn testimony—adduced during the course of a subsequent legislative investigation of the presiding judge and during his impeachment trial before the Senate of Florida—to have been tainted by corrupt and unethical conduct of the judge, the special master and respondent's counsel?

II. Was petitioner denied due process of law in a divorce action in which a final decree of divorce was entered against her, after trial before a special master appointed by the presiding judge, in view of the following incontrovertible facts:

(a) that the master had received from respondent a fee in undisclosed amount at an unrevealed time prior to filing the master's report and that such fee was ratified by the judge without inquiring disclosure either to the judge or to petitioner of its amount or the circumstances of its payment;

(b) that during the pendency of the action before the judge and the master, the judge realized a 900% profit

from his investment in a highly speculative business venture at the invitation of the law partner of the special master—at a time when their law firm was actively practicing before the judge's court;

(c) that prior and subsequent to the judge's confirmation of the master's report, respondent's counsel had given the judge numerous gifts of value and had made substantial contributions to the judge's political campaigns for judicial office;

(d) that the judge, in justification of his unethical conduct, pleaded as a defense at his subsequent impeachment trial that the Canons of Ethics, although adopted by the Supreme Court of Florida, were never enacted into law by the legislature and therefore did not have the force of law in Florida.

Statement

During July and August of 1957, Circuit Judge George E. Holt, Senior Judge of the Eleventh Judicial Circuit of Florida, was tried before the Senate of Florida sitting as a court of impeachment. Articles of Impeachment had been preferred against Judge Holt on May 27, 1957.[1]

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[1] Journal of the Florida House of Representatives, May 27, 1957, pp. 1727-1728; Impeachment Appendix No. 1, 10 Fla. Supp. 188 (1957). The Official Journals of the Florida Senate and House of Representatives will be judicially noticed by the Supreme Court of Florida. *State ex rel. X-Cel Stores* v. *Lee*, 122 Fla. 685, 166 So. 568, affd. on reh. 122 Fla. 670, 166 So. 262 reh. den. 122 Fla. 700 (1936); *State ex rel. Lane Drug Stores* v. *Simpson*, 122 Fla. 582; 166 So. 227, affd. on reh. 122 Fla. 670, 166 So. 262 (1935); *State ex rel. Bd. of Commissioners* v. *Helseth*, 104 Fla. 208, 140 So. 655 (1932); *Gaynn* v. *Hardee*, 92 Fla. 543, 110 So. 343 (1926); *State ex rel. Buford* v. *Carley*, 89 Fla. 361, 104 So. 577 (1925); *Amos* v. *Mosley*, 74 Fla. 555, 77 So. 619 (1917); *State ex rel. Turner* v. *Hocker*, 30 Fla. 358, 18 So. 767 (1895); See also 31 C. J. S. Evidence § 43, p. 608. This Court will judicially notice matters of which the court below may take judicial notice. *Hanley* v. *Donoghue*, 116 U. S. 1, 6 (1885); *Lloyd* v. *Matthews*, 155 U. S. 222, 227 (1894); *Bothwell* v. *Buckbee, Mears Co.*, 275 U. S. 274, 279 (1927).

On the basis of disclosures and express admissions made in testimony before a special committee of the Florida House of Representatives appointed to investigate charges of misconduct by Judge Holt, and before the Florida Senate during Judge Holt's impeachment trial, petitioner, on February 25, 1958, filed in the Supreme Court of Florida, a petition for leave to apply in the Circuit Court of the Eleventh Judicial Circuit for leave to file a Bill of Review (R. 2568-2617).

Petitioner's proposed Bill sought, on the basis of such newly discovered and incontrovertible evidence, review of proceedings in the Circuit Court which had resulted in the entry of a final decree of divorce against petitioner in July, 1955, which decree had been affirmed by the Supreme Court of Florida on May 1, 1957—shortly before the Florida House of Representatives voted to impeach Judge Holt.

* * *

Petitioner and respondent, resident domiciliaries of New York, had been married for eighteen years. In October, 1953, respondent abandoned petitioner and their two children and after he had been apprehended in adultery, absconded and established a purported residence in Miami Beach, Florida.

On May 24, 1954, respondent commenced a divorce action in the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida, alleging petitioner's cruel and inhuman treatment and her habitual indulgence in a violent temper (R. 1-8). Petitioner, at all times a New York resident domiciliary, was served with process in New York. She appeared specially and moved to dismiss on the ground that respondent was not a bona fide resident of Florida and that he had established a purported residence solely to obtain a divorce (R. 12).

The case came—and remained throughout—before Circuit Judge George E. Holt.

At about the time the case was assigned to Judge Holt, respondent's attorney of record retained Morton Rothenberg, Esq. as associate counsel (R. 10-11). The order

allowing Rothenberg to enter the case was signed by Judge Holt on June 15, 1954 (R. 10).

Judge Holt denied petitioner's motion to dismiss with leave to set up lack of jurisdiction as a defense, and granted petitioner the grossly inadequate sums of $200 suit money and $500 counsel fee (R. 35), disregarding respondent's undenied wealth (R. 14-18).

Petitioner filed an answer denying respondent's allegations of cruelty, and affirmatively pleading lack of jurisdiction, respondent's adultery, cruel and inhuman treatment, abandonment of petitioner and their children and failure to support them (R. 29-34).

The parties stipulated that the cause be referred to a special master—yet unnamed—to be appointed by Judge Holt, and that respondent would defray the cost of the reference. Judge Holt appointed as special master, John W. Prunty, a Miami attorney (R. 60), who was then the general law partner of Thurman A. Whiteside, the partners conducting their law practice under the firm name of Yonge, Whiteside and Prunty.

The trial was conducted before Special Master Prunty during January and February, 1955. The Master filed his report with Judge Holt on May 5, 1955, in which he found that respondent was a Florida resident, that he had proved his case, and that petitioner failed to establish her defenses, including respondent's adultery. The Master recommended a decree of divorce in respondent's favor (R. 2442-2464). In reaching his conclusions, the Master rejected the testimony of petitioner's many disinterested witnesses and ignored petitioner's documentary evidence, *i.e.* letters, motion pictures and photographs, as well as respondent's own admissions.

The Special Master's report acknowledged that the Master's fee had been paid by respondent (R. 2463) but failed to state its amount, and when it had been paid.

The Master's failure to report the amount of his fee directly violated Rule 10(d) of the Circuit Court Rules, which provides:

"No Master shall have authority to set his or her fee, but may suggest to the Court what in his or her opinion may be the reasonable amount thereof."

In her bill of exceptions, petitioner took exception to respondent's payment of the fee in undisclosed amount and at an unrevealed time prior to the filing of the Master's report (R. 2497-2498). Judge Holt overruled the exception and ratified the fee without requiring any disclosure either to the court or to petitioner of its amount or the time and circumstances of its payment.

On July 25, 1956, Judge Holt entered a decree of divorce in respondent's favor.

While petitioner's appeal from the decree was pending before the Supreme Court of Florida, three successive reports were filed by the Grand Jury of Dade County charging Judge Holt with improper conduct in office and alleging improper professional practices in cases before Judge Holt by several attorneys, including Special Master Prunty (then Judge Prunty, having been appointed to the Circuit Court bench in January, 1956).[3]

The Florida Bar then investigated charges of misconduct against Judge Holt. However, the Supreme Court of Florida, in February, 1957, enjoined such proceedings on the ground that only the House of Representatives had the constitutional power to determine whether a Circuit Judge should be tried for misdemeanor in office.[4]

Thereafter the House of Representatives appointed a committee to conduct a "thorough investigation into the said charges of official misconduct of Circuit Judge Holt in and for the Eleventh Judicial Circuit made by the Dade County Grand Jury in and by its presentments of April

[3] See *In re Dade County Grand Jury*, 9 Fla. Supp. 98 (1956). Grand Jury findings that Judges Holt and Prunty were unfit and recommendations that they be impeached were expunged by the Supreme Court of Florida on the ground that the Grand Jury exceeded its jurisdiction. *State ex rel. Brautigam v. Interim Report of Grand Jury, Fla.*, 93 So. 2d 99 (1957). The Grand Jury's charges of improper practices arose in connection with the maladministration by Prunty and another as curators appointed by Judge Holt in two estate matters.

[4] *In re Investigation of Circuit Judge*, Fla. 93 So. 2d 601 (1957).

26, 1956, May 8, 1956 and September 21, 1956 [5]. The committee conducted hearings during the month of May, 1957,[6] at which Judge Holt, Judge Prunty and his former law partner, Thurman A. Whiteside, and Morton Rothenberg, respondent's counsel, testified. The Committee reported that Judge Holt had committed "misdemeanor in office" and that his conduct "tends to arouse the suspicions of the public that Holt's social and business relationships constitute an influence in his judicial conduct, and constitutes misdemeanor in office."[7] The Committee report concluded that "There have been flagrant violations of the Code of Ethics governing judges by Judge Holt", and recommended impeachment.[8]

Based upon Judge Holt's testimony, the Committee charged, as misconduct, his participation—at a 900% profit—in a "highly speculative venture",[9] with Prunty's law partner, Thurman A. Whiteside, during the time Prunty and Whiteside were practicing before Judge Holt's court. The Committee reported that in April, 1952, Judge Holt invested $200 in cash with Whiteside without written memorandum. In August, 1952, Judge Holt received a check for $1,124.28 as a return on his $200 investment. In January, 1953, Judge Holt made another investment—also in cash—with Whiteside, in the amount of $250. Again nothing in writing passed between the parties. For the $250, Judge Holt received a total return of $2,857.45.[10]

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[5] Journal of the House of Representatives, State of Florida, May 27, 1957, p. 1687.

[6] During the same month—May, 1957—the decree of divorce entered against petitioner by Judge Holt was affirmed by the Supreme Court of Florida, without opinion, 95 So. 2d 424.

[7] Journal of the House of Representatives, State of Florida, May 27, 1957, p. 1688; Impeachment Appendix No. 1, 10 Fla. Supp. 188 at 190 (1957).

[8] *Ibid.*, p. 1689; 10 Fla. Supp. 194.

[9] *Ibid.*, p. 1688; 10 Fla. Supp. 190.

[10] *Ibid.*, p. 1688; 10 Fla. Supp. 191.

Judge Holt and Whiteside testified that these investments involved the contemplated sale of surplus aviation cylinders. The Committee reported that in January, 1954, Whiteside paid Judge Holt $2,800 on his $250 investment "upon the assumption that the cylinders had been sold,"[11] although the cylinders had been "rejected by the purchaser" and were actually sold nearly eighteen months later, in May, 1955. However, Judge Holt retained the $2,800.[12] Judge Holt and his wife "did not show this gain on their 1955 income tax return but did show it on their 1956 income tax return after the investigation of the Dade County Grand Jury."[13] Significantly, the *Holland* case was pending before Judge Holt and Whiteside's partner, Prunty, and respondent paid the master's fee in undisclosed amount to Prunty during this very eighteen-month period.

The Committee also found that Whiteside arranged for Judge Holt to purchase two Jaguar automobiles,[14] and that during the time Judge Holt was involved in these transactions with Whiteside, Whiteside's law partner, Prunty, was appointed curator of an estate and fees exceeding $32,000 were allowed Prunty by Judge Holt for services as curator extending over less than one year.[15] The Commit-

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[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Ibid.*, p. 1688; 10 Fla. Supp. 192.

[15] *Ibid.*, p. 1688; 10 Fla. Supp. 191. Prunty's fees as curator, which the Committee report condemned as "excessive" and "an abuse of judicial discretion," were awarded for services extending over the same period when the *Holland* case was pending before Judge Holt and Special Master Prunty. As shown, Judge Holt permitted Prunty's fee in *Holland* to remain a secret.

tee condemned the Holt-Whiteside-Prunty deals as violating the Canons of Ethics.[16]

[16] Judge Holt testified (Official Transcript of Testimony at public hearings before Special Committee appointed under Fla. H. R. Resolution 63, 1957 Session, p. 33):

"Q. It didn't strike you as unusual, as a business man and a Judge, to make, in fourteen months, over nine hundred percent profit? A. No, sir, it did not.

Q. One final question, sir: You are, of course, familiar with the ethics governing Judges in making appointments to lawyers in which there are some interests involved, financially and otherwise, are you not, sir? A. Yes, sir.

Q. Didn't it occur to you in making the appointment that Mr. Prunty was a law partner of a man that you were engaged in a business transaction with and making large sums of money with? A. No, sir, it never did.

Q. It didn't occur to you? A. No, sir.

Q. This just seemed ordinary and usual? A. That's right."

* * *

(Official Transcript pp. 101-102):

"Q. If one of my judges over in my circuit appoints me guardian or curator or master or something, pending before him that is not, in your judicial opinion, considered practicing law before him? A. It is not.

Q. So I could do him all the favors and give him all the gifts I wanted to, and it would not be within the purview of the ethics which says that I cannot curry favors with a judge and give him gifts. Is that your interpretation? A. That's my interpretation of it."

Judge Prunty was asked his interpretation of the Canons of Ethics governing the relationship between lawyers and judges (Official Transcript, p. 219):

"Q. Then, as I interpret it, sir, the ethics that have to do with favors and giving gifts from lawyers to judges, and things of that nature, don't really mean what they say, but must be interpreted in light of the circumstances in each case? A. That would be my feeling about it. In other words, I would hesitate to say that it is completely wrong and unethical for a judge to borrow money from a lawyer if it is strictly and completely a business transaction."

The Committee also found that "Judge Holt has made a practice of accepting gifts from attorneys not only at Christmas, but at other times and that some of these gifts are not just token gifts. One witness Rothenberg, an attorney, testified that his Christmas gifts averaged $20.00 to $40.00 each."[17] The said Rothenberg, respondent's counsel in the instant divorce action, had also given Judge Holt campaign contributions when he was a candidate for judicial office.[18]

On May 27, 1957, the Florida House of Representatives voted, 65 to 25, to impeach Judge Holt, declaring that he "was and is guilty of misbehavior and misdemeanor in office"[19] in that he did "(a) Accept favors from attorneys practicing before his court. (b) Permit his personal relationships with individuals to unduly and improperly influence his judicial appointments and the allowance of fees

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[17] Journal of House of Representatives, May 27, 1957, p. 1089, 10 Fla. Supp. 193.

[18] Rothenberg testified (Official Transcript of Testimony before Special Committee under Fla. H. R. Resolution 63, 1957 Session, p. 534):

"Q. Have you ever made any gifts to Mr. Holt? A. At Christmastime occasionally we would give a Christmas present either to the Judge or the Judge's wife—we knew them—or possibly to both.

Q. Do I understand that that is a fine gift, then. A. That's right.

Q. You say 'we.' A. My partner and I. It was part of our Christmas gifts that we gave, yes.

Q. Now, did you make any contribution to Judge Holt's campaign in 1954? A. Yes, sir."

* * *

(Official Transcript, p. 544)

"Q. Mr. Rothenberg, I want to clear up this campaign contribution of 1954 thing. You stated that one occasion you personally contributed the sum of $500? A. Yes, sir.

Q. Then on another occasion there was a total of $180 contributed by you in this group that Mr. McLane read off a few minutes ago? A. Yes, sir."

[19] Journal of the House of Representatives, State of Fla., May 27, 1957, pp. 1727-1728, 10 Fla. Supp. 198, 202.

to such appointees. (c) Borrow money from an attorney practicing before his court. (d) Award excessive and unnecessary fees. (e) Accept gifts from attorneys practicing before his court. (f) Flagrantly violate certain provisions of the Code of Ethics covering judges as adopted by the Supreme Court of Florida."[20]

The impeachment trial took place before the Senate of the State of Florida from July 8 to August 15, 1957. Judge Holt's answer to the Articles of Impeachment admitted, *inter alia*, that he had accepted favors and gifts from attorneys, denied that any of his actions were improper, and pleaded in defense that the Canons of Ethics—approved by the Supreme Court of Florida—were never enacted into law and that "Said Code of Ethics does not have force of law in Florida."[22] Judges Holt and Prunty,

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[20] *Ibid.* p. 1727; 10 Fla. Supp. at 198.

[21] A bill of particulars of the Articles of Impeachment alleged, *inter alia*,

> "That between the dates of December 20, 1955 and January 18, 1956 the said Circuit Judge George E. Holt accepted from one Morton Rothenberg, an attorney of Dade County, Florida practicing before the said Circuit Judge George E. Holt in the Eleventh Judicial Circuit of Florida, a gift consisting of robe and pajamas, of the approximate value of Forty Dollars ($40.00) that the said Circuit Judge George E. Holt also accepted from the said Morton Rothenberg at various times prior thereto gifts consisting of silverplated wine bucket, a chafing dish, steak knives, and other gifts of value." Journal of the Senate, State of Florida, July 8, 1957, p. 14.

Rothenberg was excused from testifying at the impeachment trial upon certification by his physician that he was ill. Journal of the Senate, State of Florida, July 30, 1957, p. 222.

[22] Journal of the Senate, State of Florida, July 22, 1957, pp. 48-49.

and Mr. Whiteside testified, denying that their actions had been improper.[23]

The Senate voted 20 to 14 to impeach Judge Holt, but the vote was short of the Constitutional two-thirds required for impeachment [24] and Judge Holt returned to the Circuit Court bench.

Petitioner then filed in the Supreme Court of Florida her petition for leave to apply to the Circuit Court for leave to file a Bill of Review (R. 2569-2573, Appendix D). She urged that, in the light of the newly-discovered evidence of the unethical practices of the Judge, the Special Master and respondent's counsel, all of which she specifically alleged (R. 2569-2571, Appendix D)—which manifestly influenced the determination against her—petitioner had been denied a fair and impartial trial consistent with the requirements of due process (R. 2570, 2589, 2591, 2598; Appendix D-1, E-16, E-18, E-23).

The petition was denied without opinion (R. 2621, Appendix B). Petition for rehearing was also denied (R. 2626, Appendix C).

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[23] Journal of the Senate, State of Florida, August, 1957, pp. 409-435; 437-445; 440-459 (Holt); 281-285; 339-355 (Prunty); July, 1957, pp. 112-120; 121-134 (Whiteside). Judge Prunty testified (Journal of the Senate, State of Florida, August 6, 1957, p. 347):

"Q. Did you heretofore make out a list of your Masterships before Judge Holt, or by Judge Holt? A. Yes, I made all sorts of lists.

* * *

Q. What is the last one shown on that list, Judge Prunty? A. Holland versus Holland.

Q. What was the Master's fee awarded in that case? A. $3,500."

* * *

This was the first statement under oath of the amount of the Master's fee in the *Holland* case. The amount was first revealed in respondent's brief on the appeal from the divorce decree, nearly two years after the filing of the master's report.

[24] Journal of the Senate, State of Florida, August 15, 1957, p. 512.

Reasons for Granting the Writ

I.

"A fair trial in a fair tribunal is a basic requirement of due process."[25] At the threshold of every inquiry as to whether the acts of a judicial tribunal in a given case meet the standards of due process is the presumption that the tribunal itself—whether right or wrong in its determinations—was thoroughly impartial and without personal interest in the result.[26] Indeed, this Court has observed that "our system of law has always endeavored to prevent even the probability of unfairness."[27] In John Adams' historic phrase, "It is the right of every citizen to be tried by judges as free, impartial, and independent as the lot of humanity will admit."[28]

The issues of due process raised in this case are as important as judicial integrity is important to our form of government. Mr. Justice Frankfurter[29] stated the proposition in these words:

> "The administration of justice by an impartial judiciary has been basic to our conception of freedom ever since Magna Carta. It is the concern not merely of the immediate litigants. Its assurance is everyone's concern, and it is protected by the liberty guaranteed by the Fourteenth Amendment."

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[25] Mr. Justice Black in *Re Murchison*, 349 U. S. 133, 136 (1955).

[26] In *N. L. R. B.* v. *Ford Motor Co.*, 114 F. 2d 905, 909 (6 Cir. 1940), the Court said, "We may accept as fundamental, the axiom that a trial by a biased judge is not in conformity with due process of law." See also *N. L. R. B.* v. *Phelps*, 136 F. 2d 562 (5 Cir. 1943); *State* v. *Calhoon*, Fla., 102 So. 2d 604, 609 (1958).

[27] *Re Murchison, supra*, 349 U. S., at 136.

[28] Art. XXIX of the Declaration of Rights of the Constitution of Massachusetts, 1780, quoted by Mr. Justice Franfurter, in his concurring opinion in *Pennekamp* v. *Florida*, 328 U. S. 331, 355 (1946).

[29] Dissenting in *Bridges* v. *California*, 314 U. S. 252, 282 (1941).

II.

By rejecting petitioner's application for *leave* to apply to the Circuit Court for leave to file a Bill of Review, the Supreme Court of Florida has decreed that even with substantial, incontrovertible evidence—sworn testimony of the very principals involved—clearly demonstrating an utter lack of integrity and complete disregard of basic ethical standards on the part of the trial judge and special master, whose determinations foreclosed petitioner's marital rights, she is without remedy in the Courts of Florida.

Did petitioner have a fair hearing before a judge who freely accepted gifts from respondent's attorney because the legislature never enacted the Canons of Ethics into law? Did she have a fair trial before a master who (with the judge's approval) crassly ignored an express rule of the court prohibiting masters from setting the amount of their own fee? Was the confirmation of the master's report—without opinion—the act of a disinterested and unbiased judge when that judge was deeply involved in highly profitable deals with the master's partner? The Supreme Court of Florida, in denying petitioner's application, has decreed that these questions—considered in the light of the disclosures made during the legislative investigation and impeachment proceedings—may never be reviwed in any forum in Florida.

Is there any justification for immunizing this extraordinarily suspect judgment from the searching light of review? This Court has held that no statement of policy favoring finality of judgments may save a judgment from scrutiny where substantial evidence of fraud is subsequently discovered.[30] Equity has always provided a procedure for review.[31]

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[30] *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, 322 U. S. 238 (1944); *Pickford* v. *Talbott*, 225 U. S. 651, 657, 658 (1912); *Marshall* v. *Holmes*, 141 U. S. 589, 590 (1891); *Marine Ins. Co.* v. *Hodgson*, 7 Cranch 332, 336 (1813).

[31] Bills of Review or Bills in the nature of Bills of Review are the proper procedure in Florida to secure review of judgments in such cases. See *Shaw* v. *Hamm*, 133 Fla. 722, 183 So. 19 (1938); *Miller* v. *Miller*, 149 Fla. 722, 7 So. 2d 9 (1942).

Where substantial evidence has challenged the integrity of a tribunal, courts have hastened to set aside the tainted judgment.[32] Thus, the Court of Appeals for the Second Circuit granted motions or petitions for review where Judge Manton's corrupt participation tainted that court's original judgment.[33]

On April 17, 1958, the Court of Appeals for the District of Columbia Circuit, in the publicized "Miami Channel 10" cases, ordered re-examination [34] of an award of a television channel by the Federal Communications Commission after charges of improper influence exerted upon Commissioner Richard A. Mack by the attorney for the successful applicant, Thurman A. Whiteside (Judge Prunty's former law partner) had come to light during the course of a Congres-

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[32] In *Root Refining Co.* v. *Universal Oil Products Co.*, 169 F. 2d 514 (3rd Cir. 1948), the court concluded that an attorney, one Kaufman, "Was employed or retained by Universal for the purpose and with the expectation that he would exercise upon Judge Davis an improper influence in order to secure favorable judicial action in the *Root* cases" (169 F. 2d at 529). Vacating its former judgment and remanding the case with directions to dismiss, the Court said:

> "By this action, the records of this court and of the District Court will be purged, and there will be no need to consider whether or not in this case Kaufman actually succeeded in exerting an improper influence upon Judge Davis * * *." (169 F. 2d at 541).

[33] *Art Metal Works, Inc.* v. *Abraham & Straus, Inc.*, 107 F. 2d 944 (2d Cir. 1939); *General Motors Corp.* v. *Preferred Electric Wire Corp.*, 109 F. 2d 615 (2d Cir. 1940); *Electric Auto-Lite Co.* v. *P. & D. Mfg. Co.*, 109 F. 2d 566 (2d Cir. 1940); *In re 671 Prospect Ave. Holding Corp.*, 105 F. 2d 960 (2d Cir. 1939); *Schick Dry Shaver* v. *Dictograph Products Co., Inc.* (2d Cir., Docket No. 15162) (not reported). See *United States* v. *Manton et al.*, 107 F. 2d 834 (2d Cir. 1938), cert. den. 309 U. S. 664 (1940).

[34] Citing *Root Refining Co.* v. *Universal Oil Products Co.*, footnote 32 *supra*.

sional investigation.[35] Commissioner Mack and Whiteside had admitted during the investigation that Mack had borrowed substantial sums of money from and had been involved in certain business ventures with Whiteside. The Circuit Court ordered the Commission to hold an evidentiary hearing "concerning the possibility that the award heretofore made may be void *ab initio* * * *."[36]

The disclosure of the Whiteside-Prunty-Holt-Rothenberg alliance in the instant case compels no less a review than those which the courts decreed in "Miami Channel 10" and the other cases cited, *supra*, for in the words of Mr. Justice Roberts, "No fraud is more odious than an attempt to subvert the administration of justice.[37]

III.

Throughout the House investigation and his impeachment trial, Judge Holt contended that his judicial decisions were unaffected by the gifts, favors or loans he received from, or by his business dealings with, the attorneys involved. But due process demands a much higher standard, as this Court has held. In *Tumey* v. *Ohio*, 273 U. S. 510

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[35] *WKAT, Inc.* v. *Federal Communications Commission*, C. A. D. C. (Docket No. 13718, 14021, and 14170; *Eastern Airlines, Inc.* v. *Federal Communications Commission*, C. A. D. C. (Docket No. 13725) Appendix F.

[36] On July 31, 1958, in *Massachusetts Bay Telecasters, Inc.* v. *Federal Communications Commission*, C. A. D. C. (Docket No. 13896) and *Greater Boston Television Corporation* v. *Federal Communications Commission*, C. A. D. C. (Docket No. 13899) the same Circuit Court followed its procedure in the Miami Channel 10 cases by entering a similar order of remand where again it appeared that improper influence might have been exerted against a commissioner.

[37] Concurring in *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, 322 U. S. 238, 251 (1944).

(1927) this Court, finding a denial of due process, unanimously reversed a conviction where the defendant had been tried before the mayor of a town under a statute which permitted the mayor to share in the fines he collected. Under analogous English cases, said Chief Justice Taft, "the slightest pecuniary interest of any officer, judicial or quasi-judicial, in the resolving of the subject matter which he was to decide, rendered the decision voidable."[38] The Chief Justice further stated:

> "There are doubtless mayors who would not allow such a consideration as $12 costs in each case to affect their judgment in it, but the requirement of due process of law in judicial procedure is not satisfied by the argument that men of the highest honor and the greatest self-sacrifice could carry it on without danger of injustice. Every procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the state and the accused denies the latter due process of law." (273 U. S. at 532)[39]

Answering the argument that defendant was clearly shown to be guilty in any event, this Court stated: "No matter what the evidence was against him, he had the right to have an impartial judge."[40]

As *Tumey* v. *Ohio* recognized, the standards expected and required of the judiciary are too high to admit of fine distinctions as to what degree of influence on a judge's decision might have been made by a possible pecuniary in-

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[38] 273 U. S. at 524.

[39] Quoted by Mr. Justice Black in *Re Murchison*, 349 U. S. 133, 136 (1955).

[40] 273 U. S. at 535.

terest in the result.[1] The basic integrity of the *Tumey* tribunal was never in question. The facts in the instant case are far more compelling. They transcend the "possibility of temptation" and conclusively demonstrate venality and corruption.

IV.

Public confidence in the courts will exist only so long as the integrity of the bench and the bar remains above reproach. Due process cannot survive in a system where judicial conduct is governed by the ethics of the market place.

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[1] The *Tumey* case restates the principle that due process is denied when a tribunal has a pecuniary interest in a case before it. Clearly, a special master has a "pecuniary interest" in fixing his own fees and keeping them hidden from the record. The Supreme Court of Florida has frequently reviewed and reduced the fees allowed special masters in matrimonial actions. *Garlick* v. *Garlick*, Fla. 38 So. 2d 222 (1949); *Rainey* v. *Rainey*, Fla., 38 So. 2d 60, (1948), holding that a special master's fee which Judge Holt had approved "was exorbitant and without support in the record," 38 So. 2d at 61; *Robbins* v. *Robbins*, 160 Fla. 825, 36 So. 2d 786 (1948), reducing to $1,200 a special master's fee of $2,500 allowed by Judge Holt; *Touby* v. *Touby*, Fla. 68 So. 2d 363 (1953), $1,600 master's fee reduced to $750; *Kleinschmidt* v. *Kleinschmidt*, Fla., 66 So. 2d 815 (1953), $3,000 master's fee reduced to $1,500; *Reid* v. *Reid*, Fla., 68 So. 2d 821 (1953). In *Garlick* v. *Garlick*, *supra*, the Court reviewed the amounts of a master's fee and other fees and ordered reductions even though the reasonableness of such fees was not assigned as error on the appeal. See also *City of Miami* v. *Hollis*, Fla., 77 So. 2d 834 (1955), where a master's fee of $3,500 in a non-matrimonial case was reduced to $1,500. Florida authorities thus clearly contemplate a judicial determination of the amount of masters' fees, after all parties have been heard.

Certiorari should be granted in this case because, to quote Mr. Justice Black,

> "tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society." [42]

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

LOUIS NIZER,
Counsel for Petitioner.

September 16, 1958.

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[42] *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U. S. 238, 246 (1944).